

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation  
Against:

**MARK DAVID KAYNE, M.D.**

Physician's and Surgeon's  
Certificate No. G-50792

Respondent

File No. 05-2004-163371

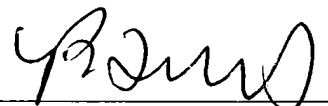
**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 17, 2006

IT IS SO ORDERED October 18, 2006.

MEDICAL BOARD OF CALIFORNIA

By:   
**Ronald L. Moy, M.D., Chair**  
Panel B  
Division of Medical Quality

1 BILL LOCKYER, Attorney General  
of the State of California  
2 TAN N. TRAN, State Bar No. 197775  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-6793  
5 Facsimile: (213) 897-9395

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **DIVISION OF MEDICAL QUALITY**  
9 **MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 MARK DAVID KAYNE, M.D.  
19656 Tulsa Street  
12 Chatsworth, California 91311

13 Physician's and Surgeon's Certificate No.  
14 G50792

15 Respondent.

Case No. 05-2004-163371

OAH No. L2006010651

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. David T. Thornton (Complainant) is the Executive Director of the Medical  
22 Board of California. He brought this action solely in his official capacity and is represented in  
23 this matter by Bill Lockyer, Attorney General of the State of California, by Tan N. Tran, Deputy  
24 Attorney General.

25 2. Respondent Mark David Kayne (Respondent) is represented in this  
26 proceeding by attorney Michael E. Reznick, whose address is 283 Ocho Rios Way, Agoura  
27 Hills, California 91377-5540.

28 3. On or about July 25, 1983, the Medical Board of California issued

1 Physician's and Surgeon's Certificate No. G50792 to Mark David Kayne, M.D. (Respondent).  
2 The Certificate was in full force and effect at all times relevant to the charges brought in  
3 Accusation No. 05-2004-163371 and will expire on March 31, 2007, unless renewed.

4 JURISDICTION

5 4. Accusation No. 05-2004-163371 was filed before the Division of Medical  
6 Quality, Medical Board of California, Department of Consumer Affairs (Division), and is  
7 currently pending against Respondent. The Accusation and all other statutorily required  
8 documents were properly served on Respondent on December 15, 2005. Respondent timely filed  
9 his Notice of Defense contesting the Accusation. A copy of Accusation No. 05-2004-163371 is  
10 attached as exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and  
13 understands the charges and allegations in Accusation No. 05-2004-163371. Respondent has  
14 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
15 Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the  
17 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
18 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
19 the right to present evidence and to testify on his own behalf; the right to the issuance of  
20 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
21 reconsideration and court review of an adverse decision; and all other rights accorded by the  
22 California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
24 each and every right set forth above.

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in  
27 Accusation No. 05-2004-163371.

28 9. Respondent agrees that his Physician's and Surgeon's Certificate is subject

1 to discipline and he agrees to be bound by the Division's imposition of discipline as set forth in  
2 the Disciplinary Order below.

3 CIRCUMSTANCES IN MITIGATION

4 10. Respondent has never been the subject of any disciplinary action. He is  
5 admitting responsibility at an early stage in the proceedings. Respondent voluntarily entered a  
6 Medical Board-sponsored Diversion Program named William Farley Center at Williamsburg  
7 Place, located at 5477 Mooretown Road, Williamsburg, Virginia on September 6, 2005 and was  
8 discharged with full staff approval on December 21, 2005.

9 RESERVATION

10 11. The admissions made by Respondent herein are only for the purposes of  
11 this proceeding, or any other proceedings in which the Division or other professional licensing  
12 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

13 CONTINGENCY

14 12. The parties understand and agree that facsimile copies of this Stipulated  
15 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
16 force and effect as the originals.

17 13. In consideration of the foregoing admissions and stipulations, the parties  
18 agree that the Division may, without further notice or formal proceeding, issue and enter the  
19 following Disciplinary Order:

20 DISCIPLINARY ORDER

21 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No.  
22 G50792 issued to Mark Kayne, M.D. (Respondent) is revoked. However, the revocation is  
23 stayed and Respondent is placed on probation for five (5) years on the following terms and  
24 conditions.

25 1. ACTUAL SUSPENSION As part of probation, respondent is suspended  
26 from the practice of medicine for 60 days beginning the sixteenth (16th) day after the effective  
27 date of this decision.

28 2. CONTROLLED SUBSTANCES - TOTAL RESTRICTION During the

1 period of probation, Respondent shall not order, prescribe, dispense, administer, or possess any  
2 controlled substances as defined in the California Uniform Controlled Substances Act.

3 Respondent shall not issue an oral or written recommendation or approval to a  
4 patient or a patient's primary caregiver for the possession or cultivation of marijuana for the  
5 personal medical purposes of the patient within the meaning of Health and Safety Code  
6 section 11362.5. If respondent forms the medical opinion, after a good faith prior examination,  
7 that a patient's medical condition may benefit from the use of marijuana, respondent shall so  
8 inform the patient and shall refer the patient to another physician who, following a good faith  
9 examination, may independently issue a medically appropriate recommendation or approval for  
10 the possession or cultivation of marijuana for the personal medical purposes of the patient within  
11 the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the  
12 patient or the patient's primary caregiver that respondent is prohibited from issuing a  
13 recommendation or approval for the possession or cultivation of marijuana for the personal  
14 medical purposes of the patient, and that the patient or the patient's primary caregiver may not  
15 rely on respondent's statements to legally possess or cultivate marijuana for the personal medical  
16 purposes of the patient. Respondent shall fully document in the patient's chart that the patient or  
17 the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent  
18 from providing the patient or the patient's primary caregiver information about the possible  
19 medical benefits resulting from the use of marijuana.

20 3. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT

21 Respondent is prohibited from practicing medicine until respondent provides documentary proof  
22 to the Division or its designee that respondent's DEA permit has been surrendered to the Drug  
23 Enforcement Administration for cancellation, together with any state prescription forms and all  
24 controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA  
25 permit without the prior written consent of the Division or its designee.

26 4. CONTROLLED SUBSTANCES - ABSTAIN FROM USE Respondent

27 shall abstain completely from the personal use or possession of controlled substances as defined  
28 in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business

1 and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does  
2 not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide  
3 illness or condition.

4           Within 15 calendar days of receiving any lawful prescription medications,  
5 respondent shall notify the Division or its designee of the: issuing practitioner's name, address,  
6 and telephone number; medication name and strength; and issuing pharmacy name, address, and  
7 telephone number.

8           5.     ALCOHOL - ABSTAIN FROM USE Respondent shall abstain  
9 completely from the use of products or beverages containing alcohol.

10          6.     BIOLOGICAL FLUID TESTING Respondent shall immediately submit  
11 to biological fluid testing, at respondent's expense, upon the request of the Division or its  
12 designee. A certified copy of any laboratory test results may be received in evidence in any  
13 proceedings between the Board and the respondent. Failure to submit to, or failure to complete  
14 the required biological fluid testing, is a violation of probation.

15          7.     PRESCRIBING PRACTICES COURSE Within 60 calendar days of the  
16 effective date of this Decision, respondent shall enroll in a course in prescribing practices, at  
17 respondent's expense, approved in advance by the Division or its designee. Failure to  
18 successfully complete the course during the first 6 months of probation is a violation of  
19 probation.

20               A prescribing practices course taken after the acts that gave rise to the charges in  
21 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the  
22 Division or its designee, be accepted towards the fulfillment of this condition if the course would  
23 have been approved by the Division or its designee had the course been taken after the effective  
24 date of this Decision.

25               Respondent shall submit a certification of successful completion to the Division  
26 or its designee not later than 15 calendar days after successfully completing the course, or not  
27 later than 15 calendar days after the effective date of the Decision, whichever is later.

28          8.     PSYCHIATRIC EVALUATION Within 60 calendar days of the effective

1 date of this Decision, and on whatever periodic basis thereafter may be required by the Division  
2 or its designee, respondent shall undergo and complete a psychiatric evaluation (and  
3 psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist,  
4 who shall consider any information provided by the Division or designee and any other  
5 information the psychiatrist deems relevant, and shall furnish a written evaluation report to the  
6 Division or its designee. Psychiatric evaluations conducted prior to the effective date of the  
7 Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay  
8 the cost of all psychiatric evaluations and psychological testing.

9           Respondent shall comply with all restrictions or conditions recommended by the  
10 evaluating psychiatrist within 15 calendar days after being notified by the Division or its  
11 designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or  
12 comply with the required additional conditions or restrictions, is a violation of probation.

13           Respondent shall not engage in the practice of medicine until notified by the  
14 Division or its designee that respondent is mentally fit to practice medicine safely. The period of  
15 time that respondent is not practicing medicine shall not be counted toward completion of the  
16 term of probation.

17           9.     MEDICAL EVALUATION AND TREATMENT Within 60 calendar  
18 days of the effective date of this Decision, and on a periodic basis thereafter as may be required  
19 by the Division or its designee, respondent shall undergo a medical evaluation by a  
20 Division-appointed physician who shall consider any information provided by the Division or  
21 designee, and any other information the evaluating physician deems relevant, and shall furnish a  
22 medical report to the Division or its designee.

23           Following the evaluation, respondent shall comply with all restrictions or  
24 conditions recommended by the evaluating physician within 15 calendar days after being notified  
25 by the Division or its designee.

26           If respondent is required by the Division or its designee to undergo medical  
27 treatment, respondent shall, within 30 calendar days of the requirement notice, submit to the  
28 Division or its designee for prior approval the name and qualifications of a treating physician of

1 respondent's choice. Upon approval of the treating physician, respondent shall within 15  
2 calendar days undertake medical treatment and shall continue such treatment until further notice  
3 from the Division or its designee.

4           The treating physician shall consider any information provided by the Division or  
5 its designee or any other information the treating physician may deem pertinent prior to  
6 commencement of treatment. Respondent shall have the treating physician submit quarterly  
7 reports to the Division or its designee indicating whether or not the respondent is capable of  
8 practicing medicine safely. Respondent shall provide the Division or its designee with any and  
9 all medical records pertaining to treatment that the Division or its designee deems necessary.

10           If, prior to the completion of probation, respondent is found to be physically  
11 incapable of resuming the practice of medicine without restrictions, the Division shall retain  
12 continuing jurisdiction over respondent's license, and the period of probation shall be extended  
13 until the Division determines that respondent is physically capable of resuming the practice of  
14 medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and  
15 treatment.

16           Failure to undergo and continue medical treatment or comply with the required  
17 additional conditions or restrictions is a violation of probation.

18           Respondent shall not engage in the practice of medicine until notified in writing  
19 by the Division or its designee of its determination that respondent is medically fit to practice  
20 safely.

21           10.   UNANNOUNCED CLINICAL SITE VISIT At least once per calendar  
22 year, or more frequently as determined by the Committee or its designee, unannounced clinical  
23 site visits may be made by the committee or its designee to ensure that Respondent is complying  
24 with all terms and conditions of probation.

25           11.   SUPERVISION OF PHYSICIAN ASSISTANTS During probation,  
26 respondent is prohibited from supervising physician assistants.

27           12.   OBEY ALL LAWS Respondent shall obey all federal, state and local  
28 laws, all rules governing the practice of medicine in California, and remain in full compliance



1 with any court ordered criminal probation, payments and other orders.

2 13. QUARTERLY DECLARATIONS Respondent shall submit quarterly  
3 declarations under penalty of perjury on forms provided by the Division, stating whether there  
4 has been compliance with all the conditions of probation. Respondent shall submit quarterly  
5 declarations not later than 10 calendar days after the end of the preceding quarter.

6 14. PROBATION UNIT COMPLIANCE Respondent shall comply with the  
7 Division's probation unit. Respondent shall, at all times, keep the Division informed of  
8 respondent's business and residence addresses. Changes of such addresses shall be immediately  
9 communicated in writing to the Division or its designee. Under no circumstances shall a post  
10 office box serve as an address of record, except as allowed by Business and Professions Code  
11 section 2021(b).

12 Respondent shall not engage in the practice of medicine in respondent's place of  
13 residence. Respondent shall maintain a current and renewed California physician's and  
14 surgeon's license.

15 Respondent shall immediately inform the Division, or its designee, in writing, of  
16 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,  
17 more than 30 calendar days.

18 15. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent  
19 shall be available in person for interviews either at respondent's place of business or at the  
20 probation unit office, with the Division or its designee, upon request at various intervals, and  
21 either with or without prior notice throughout the term of probation.

22 16. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent  
23 should leave the State of California to reside or to practice, respondent shall notify the Division  
24 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-  
25 practice is defined as any period of time exceeding 30 calendar days in which respondent is not  
26 engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions  
27 Code.

28 All time spent in an intensive training program outside the State of California

1 which has been approved by the Division or its designee shall be considered as time spent in the  
2 practice of medicine within the State. A Board-ordered suspension of practice shall not be  
3 considered as a period of non-practice. Periods of temporary or permanent residence or practice  
4 outside California will not apply to the reduction of the probationary term. Periods of temporary  
5 or permanent residence or practice outside California will relieve respondent of the responsibility  
6 to comply with the probationary terms and conditions with the exception of this condition and  
7 the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance;  
8 and Cost Recovery.

9           Respondent's license shall be automatically cancelled if respondent's periods of  
10 temporary or permanent residence or practice outside California total two years. However,  
11 respondent's license shall not be cancelled as long as respondent is residing and practicing  
12 medicine in another state of the United States and is on active probation with the medical  
13 licensing authority of that state, in which case the two year period shall begin on the date  
14 probation is completed or terminated in that state.

15           17.    FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

16           In the event respondent resides in the State of California and for any reason  
17 respondent stops practicing medicine in California, respondent shall notify the Division or its  
18 designee in writing within 30 calendar days prior to the dates of non-practice and return to  
19 practice. Any period of non-practice within California, as defined in this condition, will not  
20 apply to the reduction of the probationary term and does not relieve respondent of the  
21 responsibility to comply with the terms and conditions of probation. Non-practice is defined as  
22 any period of time exceeding 30 calendar days in which respondent is not engaging in any  
23 activities defined in sections 2051 and 2052 of the Business and Professions Code.

24           All time spent in an intensive training program which has been approved by the  
25 Division or its designee shall be considered time spent in the practice of medicine. For purposes  
26 of this condition, non-practice due to a Board-ordered suspension or in compliance with any  
27 other condition of probation, shall not be considered a period of non-practice.

28           Respondent's license shall be automatically cancelled if respondent resides in

1 California and for a total of two years, fails to engage in California in any of the activities  
2 described in Business and Professions Code sections 2051 and 2052.

3 18. COMPLETION OF PROBATION Respondent shall comply with all  
4 financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar  
5 days prior to the completion of probation. Upon successful completion of probation,  
6 respondent's certificate shall be fully restored.

7 19. VIOLATION OF PROBATION Failure to fully comply with any term or  
8 condition of probation is a violation of probation. If respondent violates probation in any respect,  
9 the Division, after giving respondent notice and the opportunity to be heard, may revoke  
10 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to  
11 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,  
12 the Division shall have continuing jurisdiction until the matter is final, and the period of  
13 probation shall be extended until the matter is final.

14 20. LICENSE SURRENDER Following the effective date of this Decision, if  
15 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy  
16 the terms and conditions of probation, respondent may request the voluntary surrender of  
17 respondent's license. The Division reserves the right to evaluate respondent's request and to  
18 exercise its discretion whether or not to grant the request, or to take any other action deemed  
19 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,  
20 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the  
21 Division or its designee and respondent shall no longer practice medicine. Respondent will no  
22 longer be subject to the terms and conditions of probation and the surrender of respondent's  
23 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the  
24 application shall be treated as a petition for reinstatement of a revoked certificate.

25 //

26 //

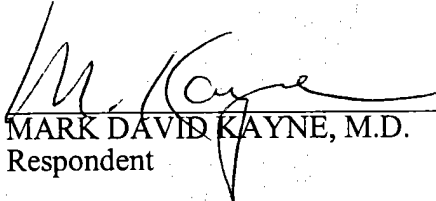
27 //

28 //

1 ACCEPTANCE

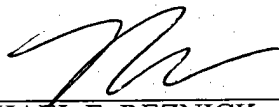
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
3 have fully discussed it with my attorney, Michael E. Reznick. I understand the stipulation and  
4 the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Medical Board of California.

7 DATED: 9/13/06.

8  
9   
10 MARK DAVID KAYNE, M.D.  
11 Respondent

12 I have read and fully discussed with Respondent the terms and conditions and  
13 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its  
14 form and content.

15 DATED: 9/13/06.

16  
17   
18 MICHAEL E. REZNICK  
19 Attorney for Respondent

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
2  
2  
2  
2  
2  
2  
2  
2

DATED: 9/19/06

2nd 2

Attorneys for Complainant

12  
13  
14  
15  
16  
17  
18  
19  
20  
2  
2  
2  
2  
2  
2  
2

**Exhibit A**

**Accusation No. 05-2004-163371**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 AMY FAN, State Bar No. 156211  
Deputy Attorney General  
3 California Department of Justice  
300 South Spring Street, Suite 1702  
4 Los Angeles, California 90013  
Telephone: (213) 897-0188  
5 Facsimile: (213) 897-9395

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **DIVISION OF MEDICAL QUALITY**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **MARK DAVID KAYNE, M.D.**  
14 19656 Tulsa Street  
15 Chatsworth, CA 91311

16 Physician's and Surgeon's Certificate  
No. G50792

Respondent.

Case No. 05-2004-163371

**A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

19 1. David T. Thornton (Complainant) brings this Accusation solely in his  
20 official capacity as the Executive Director of the Medical Board of California, Department of  
21 Consumer Affairs (Board.)

22 2. On or about July 25, 1983, the Board issued Physician's and Surgeon's  
23 Certificate Number G50792 to Mark David Kayne, M.D. (Respondent). The Physician's and  
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on March 31, 2007, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board's Division of Medical Quality  
28 (Division) under the authority of the following laws. All section references are to the Business

**FILED**  
**STATE OF CALIFORNIA**  
**MEDICAL BOARD OF CALIFORNIA**  
**SACRAMENTO**  
BY 213 897 1520

1 and Professions Code unless otherwise indicated.

2           4. Section 2227 of the Code provides that a licensee who is found guilty  
3 under the Medical Practice Act may have his or her license revoked, suspended for a period not  
4 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or  
5 such other action taken in relation to discipline as the Division deems proper.

6           5. Section 2234 of the Code states:

7           "The Division of Medical Quality shall take action against any licensee who is  
8 charged with unprofessional conduct. In addition to other provisions of this article,  
9 unprofessional conduct includes, but is not limited to, the following:

10           "(a) Violating or attempting to violate, directly or indirectly, assisting in or  
11 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,  
12 the Medical Practice Act].

13           "(b) Gross negligence.

14           "(c) Repeated negligent acts. To be repeated, there must be two or more  
15 negligent acts or omissions. An initial negligent act or omission followed by a separate  
16 and distinct departure from the applicable standard of care shall constitute repeated  
17 negligent acts.

18           "(1) An initial negligent diagnosis followed by an act or omission medically  
19 appropriate for that negligent diagnosis of the patient shall constitute a single negligent  
20 act.

21           "(2) When the standard of care requires a change in the diagnosis, act, or  
22 omission that constitutes the negligent act described in paragraph (1), including, but not  
23 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's  
24 conduct departs from the applicable standard of care, each departure constitutes a separate  
25 and distinct breach of the standard of care.

26           "(d) Incompetence.

27           "(e) The commission of any act involving dishonesty or corruption which is  
28 substantially related to the qualifications, functions, or duties of a physician and surgeon.



1           "(f) Any action or conduct which would have warranted the denial of a  
2       certificate."

3           6.       Section 2236 of the Code states, in part:

4           "(a) The conviction of any offense substantially related to the qualifications,  
5       functions, or duties of a physician and surgeon constitutes unprofessional conduct within  
6       the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of  
7       conviction shall be conclusive evidence only of the fact that the conviction occurred.

8           "..."

9           "(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is  
10       deemed to be a conviction within the meaning of this section and Section 2236.1. The  
11       record of conviction shall be conclusive evidence of the fact that the conviction  
12       occurred."

13          7. California Code of Regulations, title 16, section 1360, states:

14          "For the purposes of denial, suspension or revocation of a license, certificate or  
15       permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or  
16       act shall be considered to be substantially related to the qualifications, functions or duties  
17       of a person holding a license, certificate or permit under the Medical Practice Act if to a  
18       substantial degree it evidences present or potential unfitness of a person holding a license,  
19       certificate or permit to perform the functions authorized by the license, certificate or  
20       permit in a manner consistent with the public health, safety or welfare. Such crimes or  
21       acts shall include but not be limited to the following: Violating or attempting to violate,  
22       directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate  
23       any provision of the Medical Practice Act."

24          8. Section 2261 of the Code states:

25          "Knowingly making or signing any certificate or other document directly or  
26       indirectly related to the practice of medicine or podiatry which falsely represents the  
27       existence or nonexistence of a state of facts, constitutes unprofessional conduct."  
28

1                   9.     Section 4324 of the Code provides in relevant part:

2                   (a)     Every person who signs the name of another, or of a fictitious person, or  
3     falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any  
4     prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by  
5     imprisonment in the state prison, or by imprisonment in the county jail for not more than one  
6     year.

7                   10.     Endocet is a narcotic analgesic used to treat moderate to moderately severe  
8     pain. It contains two drugs, acetaminophen and oxycodone. Acetaminophen is used to  
9     reduce both pain and fever. Oxycodone, a narcotic analgesic, is used for its calming  
10    affect and for pain. Oxycodone is a Schedule II controlled substance pursuant to Health  
11    and Safety Code section 11055 and a dangerous drug pursuant to Business and  
12    Professions Code section 4022.

13                  11.     Oxycodone, is used for the management of moderate to severe pain when a  
14    continuous, around the clock analgesic is needed for an extended period of time.

15                  12.     Diazepam is used for the management of anxiety disorders or for the short-  
16    term relief of the symptoms of anxiety. It is a Schedule IV controlled substance pursuant  
17    to Health and Safety Code section 11057(d)(8), and a dangerous drug pursuant to section  
18    4022 of the Code.

19                  13. Section 2266 of the Code states: "The failure of a physician and surgeon to  
20    maintain adequate and accurate records relating to the provision of services to their  
21    patients constitutes unprofessional conduct."

22                               **FIRST CAUSE FOR DISCIPLINE**

23                               **(CONVICTION OF A CRIME)**

24                  14.     Respondent is subject to disciplinary action under section 2236 of the  
25    Code in that Respondent was convicted of two counts of forging prescriptions in violation of  
26    section 4324, subdivision (a), of the Code. The circumstances are as follows:

27                  15.     On June 7, 2005, a fifteen count misdemeanor complaint was filed in Los  
28    Angeles County Superior Court in *People v. Mark Kayne*, Case No. 5PN03264, charging

1 Respondent with obtaining controlled substances by fraud, deceit or misrepresentation on March  
2 18, 2004, May 7, 2004, June 21, 2004, September 18, 2004 and October 14, 2004,<sup>1</sup> in violation  
3 of Health and Safety Code section 11173(a)<sup>2</sup> (Counts 1, 4, 7, 10, 12, 14). Respondent was also  
4 charged with issuing false and fictitious prescriptions in relation to obtaining the controlled  
5 substances in violation of Health and Safety Code section 11157<sup>3</sup> (Counts 2, 5, 8, 11, 13, 15) and  
6 prescribing controlled substances for his own use in violation of Health and Safety Code section  
7 11170<sup>4</sup> (Counts 3, 6, 9).

8           16. On August 24, 2005, the complaint was amended with two additional  
9 counts for unlawfully forging a prescription in violation of section 4324(a) of the Code (Counts  
10 16, 17).

11           17. Respondent thereafter pleaded nolo contendere to unlawfully forging  
12 prescriptions as charged in counts 16 and 17. Imposition of Respondent's sentence was  
13 suspended and he was placed on summary probation for a period of 36 months. Respondent was  
14 ordered to pay a fine of \$400 plus penalty assessments, to pay the State Restitution Fund \$100  
15 and to serve 200 hours of community service.

16           18. Forging a prescription or being in possession of any drug obtained by a  
17 forged prescription in violation of section 4324(a) of the Code is an offense substantially related  
18 to the qualifications, functions, or duties of a physician and surgeon.

19 //

20 //

21 \_\_\_\_\_  
22 1. Respondent obtained diazepam, Endocet, and oxycodone.

23 2. Health and Safety Code section 11173(a) provides that: "No person shall obtain or  
24 attempt to obtain controlled substances, or procure or attempt to procure the administration of  
25 or prescription for a controlled substances, (1) by fraud, deceit, misrepresentation, or  
subterfuge; or (2) by the concealment of a material fact."

26 3. Health and Safety Code Section 11157 provides that: "No person shall issue a  
27 prescription that is false or fictitious in any respect."

28 4. Health and Safety Code Section 11170 provides that: "No personal shall prescribe,  
administer, or furnish a controlled substance for himself."

1 SECOND CAUSE FOR DISCIPLINE

2 (DISHONEST AND CORRUPT ACTS)

3 19. Respondent is subject to disciplinary action under section 2234,  
4 subdivision (e), of the Code in that Respondent falsely wrote prescriptions in the name of Joan  
5 F., but which were written and obtained for Carol K. The circumstances are as follows:

6 20. Complainant incorporates by reference paragraphs 14 through 18, as if  
7 fully set forth herein.

8 21. In October 2004, Joan F. went to the Rite Aid Pharmacy ("Rite Aid") to  
9 fill a prescription for herself. The pharmacist remarked to Joan F. that she just received a  
10 prescription for Endocet which was dispensed only five days earlier. However, Joan F. did not  
11 request or receive a prescription for Endocet.

12 22. Joan F. reviewed a list of prescriptions Rite Aid had dispensed in her name  
13 which included diazepam, Endocet and oxycodone in the period of March 2004 through October  
14 2004. Specifically, the following prescriptions were dispensed in Joan F.'s name:

15	DATE	DESCRIPTION	QTY	DAYS SUPPLIED
16	03-16-04	Diazepam 10 mg tablets	75	25
17	03-18-04	Endocet 5/325 tablets	350	29
18	05-07-04	Endocet 5/325 tablets	360	30
19	06-21-04	Endocet 5/325 tablets	200	16
20	08-18-04	Endocet 5/325 tablets	350	30
21	10-14-04	Oxycodone HCL APA	180	30

22 The prescriptions were all written by Respondent in Joan F.'s name. However, Joan F.  
23 did not request or obtain the prescriptions or medications.

24 23. Respondent prescribed the medications under Joan F.'s name and obtained  
25 the medications from the pharmacy.

26 24. Respondent did not have any medical records in support of the  
27 prescriptions identified in paragraph 22, above.

28 //

1                   25.    On July 7, 2005, Respondent was interviewed by the Medical Board's  
2 investigator regarding the above prescriptions. Respondent admitted that the prescriptions were  
3 not for Joan F., but for another individual named Carol K. Respondent stated that Carol K. did  
4 not have insurance and the medications were costly. Respondent stated that he knew that Joan F.  
5 paid about \$3 for her prescriptions. Respondent wrote the prescriptions for Carol K. under Joan  
6 F.'s name so that the insurance could cover the cost.

7                                   **THIRD CAUSE FOR DISCIPLINE**

8                                   **(FALSE OR FRAUDULENT ACTS)**

9                   26.    Respondent is subject to disciplinary action under section 2261 of the Code  
10 in that Respondent knowingly made or signed a certificate or other document relating to the  
11 practice of medicine which falsely represented the existence or nonexistence of a state of facts.  
12 The circumstances are as follows:

13                   27.    Complainant incorporates by reference paragraphs 14 through 18, as if  
14 fully set forth herein.

15                   28.    Complainant incorporates by reference paragraphs 19 through 25, as if  
16 fully set forth herein.

17                                   **FOURTH CAUSE FOR DISCIPLINE**

18                                   **(FAILURE TO MAINTAIN ADEQUATE RECORDS)**

19                   29.    Respondent is subject to disciplinary action under section 2266 of the Code  
20 in that Respondent failed to maintain any records or any adequate records relating to the  
21 prescribing of diazepam, Endocet and/or oxycodone. The circumstances are as follows:

22                   30.    Complainant incorporates by reference paragraphs 14 through 18, as if  
23 fully set forth herein.

24                   31.    Complainant incorporates by reference paragraphs 19 through 25, as if  
25 fully set forth herein.

26 //

27 //

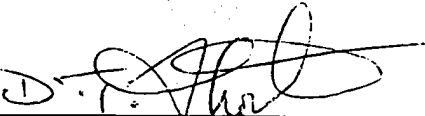
28 //

1 P R A Y E R

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number  
5 G50792, issued to Mark Kayne, M.D..  
6 2. Revoking, suspending or denying approval of Mark Kayne, M.D.'s  
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;  
8 3. Ordering Mark Kayne, M.D. to pay the Division of Medical Quality the  
9 costs of probation monitoring, if Respondent is placed on probation;  
10 4. Taking such other and further action as deemed necessary and proper.

11 DATED: December 15, 2005

12   
13 \_\_\_\_\_

14 David T. Thornton  
15 Executive Director  
16 Medical Board of California  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant

20 LA2005600083

21 Accusation\_\_3.wpd  
22  
23  
24  
25  
26  
27  
28